contemplation or in furtherance of a trade dispute to which a member of the trade union is a party *on the ground only that such act induces some other person to break a contract of employment,* or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills".

The words underlined contemplate that a person going on strike, even though the strike is not an illegal one, may break his contract of employment.

Section 54 (2) is as follows :—

"This Enactment shall not affect —

. . . . . .

(2) Any agreement between an employer and those employed by him as to such employment;

. . . . . ."

This clearly lays down that the provisions of the local law relating to trade unions do not affect the agreements between the complainants-respondents and the defendant-appellant in this case. Accordingly it is to the Labour Code that one must look to see what is the law regarding the breaking of such agreements. The relevant portion is contained in sub-sections (iii) and (iv) of section 53 of that Code. They are as follows :—

(iii) In the case of a labourer employed on agreement for a period of one month and paid according to the number of days' work performed in such month an employer shall be bound to provide work suitable to his capacity for twenty-four days in every calendar month, with the exception of authorised holidays and if he is unable or fails to provide such work on such number of days in each calendar month (except as aforesaid) whereon the labourer presents himself for work and is fit to work the employer shall nevertheless be bound to pay to the labourer in respect of each of such days wages at the same rate as if such labourer had performed a day's work, provided that any dispute between a labourer and his employer as to whether such labourer was fit to work may be referred to the Controller whose decision shall be final.

(iv) An agreement shall be deemed to be broken :—

(a) By the labourer if he is continuously absent from work for more than one day, exclusive of any day on which the employer is not bound under sub-section (iii) to provide work, without leave from the employer or without reasonable excuse;

(b) By the employer if he fails to provide work or pay wages as provided in sub-section (iii).

In this case the complainants-respondents absented themselves from work continuously for three days without leave from the defendant-appellant. The fact that of their own volition they absented themselves for the purpose of a strike cannot be held to come within the words "reasonable excuse", otherwise it would mean that labourers could absent themselves from work for however long a strike remained in progress and claim that they had not broken their agreements. Illness, or where labourers depend on transport to take them to their place of work and such transport breaks down, are ready examples of what would be regarded as a reasonable excuse for being absent from work.

Therefore by absenting themselves from work for three days continuously the complainants-respondents, by paragraph (a) of sub-section (iv) set out above, have broken their agreements with the defendant-appellant, and they were not, as found by the Deputy Commissioner of Labour, dismissed by him.

Accordingly, the judgment of the Deputy Commissioner of Labour is set aside as regards complainants-respondents 1, 3 and 4. The defendant-appellant, who was represented by Mr. Charlesworth, did not ask for costs and therefore there is no order as to costs of this appeal.

The appeal involving the second complainant-respondent is adjourned. Meanwhile no execution is to issue on the judgment awarded in her favour by the Deputy Commissioner of Labour.

Appeal Allowed.

RAMAMOORTHY v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., Malayan Union, Murray Aynsley, C.J., Singapore and Bostock Hill, J.) October 15, 1947]

Penal Code, S. 193 — Giving false evidence — Alternative Charges based on contradiction between statement made in course of police investigation and

evidence given in course of preliminary inquiry or trial — Criminal Procedure Code, Ss. 112, 116, 2nd Schedule, Part XXVII (ii), para. 4.

The appellant in this case wrote a letter to the police reporting a robbery at his house and naming four persons as having taken part in it. In the course of the resultant police investigation he made a statement repeating these allegations. At the preliminary inquiry however he said he could not recognise any of the robbers. He was charged in the alternative under s. 193 of the Penal Code with making contradictory statements — the first in the police investigation and the second during the preliminary inquiry — and was convicted and sentenced to two years rigorous imprisonment. He appealed against his conviction.

Held, (1) that, alternative charges based on contradiction between a statement made in the course of a police investigation and evidence given in the course of a preliminary inquiry or trial in the same matter will lie; (2) that, in the special circumstances of this case, if the appellant had, in his statement in the course of the police investigation, contradicated his original letter, he would have exposed himself by such statement to a charge of making a false report to the police and therefore this would put him within the protection of the exception to s. 112 (ii) of the Criminal Procedure Code and absolved him from legal liability to tell the truth in his statement in course of the police investigation; and (3) that the appellant was therefore not subject to s. 193 of the Penal Code as regards both his contradictory statements charged, and the conviction based on such contradictory statements must be quashed.

Case referred to :—

(1) *Purshottam Ishvar Amin v. Emperor* (A.I.R. (1921) Bom. 3.

CRIMINAL APPEAL.

R. Ramani for the Appellant.

C. H. Whitton for the Respondent.

The judgment of the Court of Appeal was given by :—

Willan, C. J. : — In this case the appellant wrote a letter to the police on the 17th day of May, 1946, in which he reported that a robbery had taken place at his house on the 14th day of January, 1942, and in that letter he named four Sikhs as having taken part in that robbery.

Following the receipt of that letter the senior police officer concerned ordered a police investigation and a statement was taken from the appellant in that investigation. The statement made by the appellant in the course of that investigation was consistent with the report made in his letter to the police, except for the minor difference that in the statement he stated that he identified five, not four, Sikhs.

A prosecution against the Sikhs ensued and at the preliminary enquiry the appellant, who was an important witness for the prosecution, gave evidence that he was unable to recognise any of the persons who had robbed him.

Clearly this evidence at the preliminary enquiry and the statement the appellant made to the police during the police investigation are contradictory. The appellant was charged in the alternative under section 193 of the Penal Code with making contradictory statements — the first in the police investigation and the second during the preliminary enquiry — and was convicted and sentenced to two years rigorous imprisonment.

His appeal against his conviction is on two main grounds of law :—

(1) That the charge is bad in that a statement made in the course of a police investigation cannot be linked with evidence given during a judicial proceeding so as to form the basis of an alternative charge under section 193 of the Penal Code.

(2) That if the appellant's statement made during the police investigation had been the same as the evidence he gave at the preliminary enquiry (which evidence he claims to be true) he would have exposed himself to a criminal charge because such statement would have been different from the report made to the police in his original letter, and that therefore his statement made in the police investigation is protected by the provisions of sub-section (ii) of section 112 of the Criminal Procedure Code.

As to the first ground of appeal — that is that a statement made during the course of a police investigation cannot be linked with evidence given during a judicial proceeding so as to form the basis of an alternative charge under section 193 of the Penal Code — there are conflicting decisions in India but no decided local case.

Mr. Ramani, for the appellant, submitted that the legal validity to frame a charge drawn in the alternative depends wholly on illustration (b) to section 166 of the Criminal Procedure Code and also the form of alternative charge contained in paragraph 4 of Part XXVII (II) of the Second Schedule to that Code.

Section 166 of the Criminal Procedure Code is as follows :—

> If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.
>
> ILLUSTRATIONS.
>
> (a) A. is accused of an act which may amount to theft or receiving stolen property or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

(b) A. states on oath before the committing Magistrate that he saw B. hit C. with a club. Before the Court of a Judge A. states on oath that B. never hit C. A. may be charged in the alternative and convicted of intentionally giving false evidence although it cannot be proved which of these contradictory statements was false.

Paragraph 4 of Part XXVII (II) of the Second Schedule to the Criminal Procedure Code is as follows :—

Alternative charges on Section 193.	4. That you, on or about the.....day of....., at....., in the course of the inquiry into..... before....., stated in evidence that.....and that you, on or about the.....day of....., at....., in the course of the trial of....., before....., stated in evidence that .....one of which statements you knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Penal Code.

Mr. Ramani argued that the form of alternative charge contained in paragraph 4 of Part XXVII (II) of the Second Schedule to the Criminal Procedure Code contains the words "stated in evidence" in respect of each of the two statements to be set out in the charge, and that being so it shows that this form of alternative charge can only be used when both statements are made in judicial proceedings.

In support of that argument Mr. Ramani pointed out that illustration (b) to section 166 of the Criminal Procedure Code was not added until 1926, whereas the alternative form of charge has been in existence long before that. He submitted that since illustration (b) to section 166 of the Criminal Procedure Code is an illustration of two contradictory statements both made on oath, the addition of such an illustration in 1926 supports his arguments that the form of alternative charge already referred to is restricted to contradictory statements made in judicial proceedings.

We are unable to agree with that argument. It would be impossible for the legislature to give illustrations of every instance when an alternative charge such as this could be framed. On this aspect of the appeal we agree with the judgments of Fawcett J. and Macleod C. J. in the case of *Purshottam Ishvar Amin v. Emperor*[1] which is a full Bench case. At page 13, Fawcett J. stated as follows :—

> "As to the third question, it is true that illustration (b) to section 236" (equivalent to section 166 of the local Criminal Procedure Code) "and the form of charge in No. XXVII of Schedule V of the Criminal Procedure Code" (equivalent to paragraph 4 of Part XXVII (II) of the Second Schedule to the local Criminal Procedure Code) "presumably relate to contradictory statements in an inquiry before a Committing Magistrate and in a trial before a Sessions Court; but this by no means justifies the view that the Legislature intended to confine the power to frame an alternative charge under section 236 to the case of contradictory statements falling under the first part of section 193, Indian Penal Code, or to a case where both statements fall under the same part of that section. The illustrations and forms are useful guides to the meaning of a section, but do not constitute the main enactment."

Macleod C. J. at page 10, stated as follows :—

> "The illustration (b) made it clear that it was not necessary to prove on which of the two occasions false evidence had been given. But the illustration does not alter but merely explains the section, and it cannot be that only the contradictory statements mentioned therein can form the basis of an alternative charge."

Illustration (b) to section 166 of the Criminal Procedure Code is merely an illustration that evidence at a trial following evidence taken at the preliminary inquiry, preceding that trial, form a "series of acts" envisaged by that section. There is thus a common relation between the preliminary inquiry and the trial. But there is also common relation, possibly on a wider basis, between a preliminary inquiry and the particular police investigation immediately preceding that preliminary inquiry. Therefore a statement made during such investigation and evidence given at the preliminary inquiry form a "series of acts" as required by section 166 of the Criminal Procedure Code and thus can be the subject of an alternative charge if such statement and such evidence are contradictory.

To hold otherwise would have unfortunate results in that witnesses might make the most incriminating statements in a police investigation, resulting in persons being charged with offences, with only the slightest chance of such witnesses being found guilty of perjury, if they went back on their police investigation statements at the trial. It is very difficult to prove one statement, or one piece of evidence, to be false, and it is only when there are contradictory statements that there is any real chance of a conviction.

With regard to the second ground of appeal by which the appellant claims protection under sub-section (ii) of section 112 of the Criminal Procedure Code, it should be pointed out that this was not submitted to the learned trial Judge, although the appellant, at his trial, was represented by Counsel.

On this second ground of appeal Mr. Ramani submitted that if the appellant, when he made his statement during the police investigation, had made a statement which accorded with the evidence he gave at the preliminary inquiry, he would have exposed himself to a prosecution for giving false information to the police in the letter he first sent to them, because his statement and the contents of his letter would have been contradictory.

Sub-sections (i) and (ii) of section 112 of the Criminal Procedure are as follows :—

112 (i) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(ii) Such person shall be bound to answer truly all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to penalty or forfeiture.

Now, if the appellant had made at the police investigation a statement contradictory to the contents of his letter, he would have exposed himself to a criminal charge for giving false information to the police. Therefore he, the appellant, persisted in making the same statement at that police investigation as he had done in his letter, even though, according to himself, such statement was false, and what was true was the evidence he gave at the preliminary inquiry.

Accordingly the appellant, in making what he himself has stated was a false statement at the police investigation, is protected by the provisions of sub-section (ii) of section 112 of the Criminal Procedure Code, which allows a person not to answer truly any question which would expose him to a criminal charge.

Hence, on that second ground this appeal must succeed and the conviction and sentence quashed.

Appeal Allowed.

GOVINDASAMY v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J.), Malayan Union, Murray-Aynsley, C.J. and Bostock Hill, J.) October 15, 1947]

Penal Code, S. 193 — Giving False Evidence — Alternative form of charge — Criminal Procedure Code, s. 116.

In this case the appellant was convicted on his plea of guilty under S. 193 of the Penal Code, in that he made contradictory statements in a police investigation and during the ensuing preliminary inquiry. The appeal was on the issue of law that the charge which was in the alternative, was bad in that a statement made in the course of a police investigation cannot be linked with evidence given during a judicial proceeding so as to form the basis of an alternative charge under S. 193 of the Penal Code.

Held, that alternative charges based on contradiction between a statement made in the course of a police investigation and evidence given in the course of a preliminary inquiry in the same matter will lie.

Case referred to :—

(1) *Ramamoorthy v. Public Prosecutor* (1948) M.L.J. 43.

CRIMINAL APPEAL.

R. Ramani for the Appellant.

C. H. Whitton (Crown Counsel) for the Respondent.

The judgment of the Court of Appeal was given by :—

Willan, C. J. : — In this case the appellant was convicted on his plea of guilty under section 193 of the Penal Code, in that he made contradictory statements in a police investigation and during the ensuing preliminary inquiry.

The appeal is on an issue of law that the charge, which was in the alternative, is bad in that a statement made in the course of a police investigation cannot be linked with evidence given during a judicial proceeding so as to form the basis of an alternative charge under section 193 of the Penal Code.

In the appeal of *Ramamoorthy v. Public Prosecutor*[1] we have decided that such an alternative form of charge lies. In this appeal there is not the added complication which was present in the appeal just mentioned, and therefore this appeal is dismissed and the conviction and sentence of eighteen months rigorous imprisonment maintained.

Since the appellant has been on bail pending appeal, the sentence will commence to run from the date of this judgment, taking into account that the appellant has already served part of his imprisonment from the 1st to the 15th July, 1947.

Appeal Dismissed.

ALI BIN HAJI ABDULLAH v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Murray-Aynsley, C.J.), Singapore, Spenser Wilkinson and Brown. J.J.) October 29, 1947]

Penal Code Ss. 299 and 300 — Death caused in consequence of rape — Whether conviction for murder will stand — Misdirection.

In this case a young girl of about 10 years was found dead and the medical evidence disclosed that the cause of death was violence employed in the course of a rape. There was no indication of any violence other than that used in effecting the rape. The accused was convicted of murder.

Held, (i) that as there was no indication in this case of any intention other than to rape or of any violence other than that necessary to effect the rape the conviction for murder cannot stand; (2) that there was a misdirection in the summing-up of the learned judge and that this prevented the substitution of a conviction for any lesser offence.

Case referred to :—

(1) *Shambu Khatri v. Rex* (1924) 3 Patna 410.